



0000151725

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3 Rimrock, AZ 86335
4 Complainant & Intervenor
5

6 **BEFORE THE ARIZONA CORPORATION COMMISSION**
7

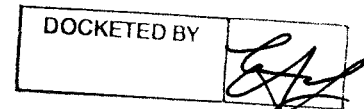
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9 **COMMISSIONERS**

10
11 BOB STUMP-Chairman
12 GARY PIERCE
13 BRENDA BURNS
14 BOB BURNS
15 SUSAN BITTER SMITH
16

ORIGINAL

Arizona Corporation Commission
DOCKETED

MAR 11 2014



17
18 IN THE MATTER OF THE APPLICATION OF
19 MONTEZUMA RIMROCK WATER COMPANY,
20 LLC FOR APPROVAL OF FINANCING TO
21 INSTALL A WATER LINE FROM THE WELL ON
22 TIEMAN TO WELL NO. 1 ON TOWERS
23

W-04254A-12-0204

24 IN THE MATTER OF THE APPLICATION OF
25 MONTEZUMA RIMROCK WATER COMPANY,
26 LLC FOR APPROVAL OF FINANCING TO
27 PURCHASE THE WELL NO. 4 SITE AND THE
28 COMPANY VEHICLE.
29

W-04254A-12-0205

30 IN THE MATTER OF THE APPLICATION OF
31 MONTEZUMA RIMROCK WATER COMPANY,
32 LLC FOR APPROVAL OF FINANCING FOR AN
33 8,000-GALLON HYDRO-PNEUMATIC TANK
34

W-04254A-12-0206

35 IN THE MATTER OF THE RATE
36 APPLICATION OF MONTEZUMA RIMROCK
37 WATER COMPANY, LLC.
38

W-04254A-12-0207

39 JOHN E. DOUGHERTY,
40 COMPLAINANT,
41 V.
42 MONTEZUMA RIMROCK WATER
43 COMPANY, LLC,
44 RESPONDENT.
45

W-04254A-11-0323

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2014 MAR 11 P 1:14
AZ CORP COMMISSION
DOCKET CONTROL

1 IN THE MATTER OF THE APPLICATION OF
2 MONTEZUMA RIMROCK WATER
3 COMPANY, LLC FOR APPROVAL OF A
4 RATE INCREASE.

W-04254A-08-0361

5
6 IN THE MATTER OF THE APPLICATION OF
7 MONTEZUMA RIMROCK WATER
8 COMPANY, LLC FOR APPROVAL OF A
9 FINANCING APPLICATION

W-04254A-08-0362

10
11 **RESPONSE TO MONTEZUMA'S**
12 **MOTION FOR**
13 **EMERGENCY/INTERIM RELIEF**

14
15 **MOTION TO INSTALL INTERIM**
16 **MANAGER**

17
18 **INTRODUCTION**
19

20 Montezuma's request for emergency/interim relief to implement interim rate increases
21 because the company is in financial distress and does not have sufficient revenue to make
22 lease payments for the Arsenic Treatment Facility is frivolous, unsupported by law and
23 should be dismissed. This is a transparent attempt by the Company to force the Court's
24 hand prior to the issuance of its Recommended Order and Opinion in this consolidated
25 docket.

26
27 The Company's motion for emergency relief is further proof that Montezuma is not a "fit
28 and proper" operator to hold a Certificate of Convenience and Necessity and that
29 sufficient grounds exist for the Commission to install an Interim Manager to operate the
30 company to secure emergency funds from a state agency to cover the costs of the ATF.

31
32 **Emergency/Interim Relief**
33

34 The controlling law for emergency/interim rate relief is embodied in Attorney General
35 Opinion No. 71-17. In that opinion, the criteria for the imposition of interim rates were
36 described as follows:

37
38 The foregoing authorities make it clear that, in general, courts
39 and regulatory bodies utilize interim rates as an emergency
40 measure when sudden change brings hardship to a company,
41 when the company is insolvent, or when the condition of the
42 company is such that its ability to maintain service pending
43 a formal rate determination is in serious doubt.
44

1 If any one of the three conditions described in AG No. 71-17 are established, the
2 Company is entitled to the interim rates it seeks. In this instance, the Company does not
3 meet any of three criteria.

4
5 1. No "sudden change" has brought the Company hardship. Acting without
6 required Commission approval and in direct violation of three procedural orders,
7 Montezuma secretly signed two long-term capital leases on March 22, 2012 for the
8 Arsenic Treatment Facility (ATF) after docketing two purported lease agreements on
9 March 19, 2012 signed by Ms. Patricia Olsen, personally, for the acquisition of the ATF.

10
11 Montezuma violated Commission rules, statutes and procedural orders when it signed the
12 March 22, 2012 capital leases in order to avoid paying potential fines from the Arizona
13 Department of Environmental Quality for violating a June 2010 Consent Order.

14
15 Montezuma now finds itself purportedly unable to pay for the cost of the capital leases it
16 entered without Commission approval. Montezuma, however, has provided no supporting
17 documentation that Nile River Leasing and Financial Pacific Leasing are, in fact, seeking
18 the voluntary return of the ATF equipment and building.

19
20 Montezuma's gross mismanagement and deceptive actions in 2012 that have resulted in
21 the Company's inability to now pay for the ATF do not constitute a "sudden change" that
22 requires the imposition of emergency rate increase on ratepayers. Nor does the length of
23 time since the rate hearing concluded last summer and the pending issuance of a
24 Recommended Opinion and Order constitute a "sudden change."

25
26 This is not a situation where an unexpected increase in the cost of water or electricity is
27 damaging the company's financial condition. This is simply a case where the acts of a
28 corrupt and incompetent management have caught up with the Company.

29
30 2. The Company has presented no evidence that it is insolvent. The company
31 provided no supporting documentation to support its claim of financial difficulties. In fact,
32 Montezuma's owner Patricia Olsen testified during the evidentiary hearing that entering
33 into the capital lease agreements for the ATF without prior Commission approval was in
34 the best of interest of ratepayers and that lease payments were being made without harm
35 to the company.

36
37 *By Mr. Wiley: And you have continued to make payments*
38 *to Financial Pacific and Nile River under those leases, correct?*

39 *Ms. Olsen: Yes. (Evidentiary Hearing, Vol. 1, Lines 1-4, June 20, 2013.)*

40
41 *Mr. Wiley: Has the company been impaired in its operation*
42 *as a water utility with these leases in place?*

43 *Ms. Olsen. No. (Evidentiary Hearing, Vol. 1, Lines 18-20, June 20, 2013.)*

44
45 Less than a year later, Montezuma claims it is unable to pay for the \$1,480/month lease
46 payments for the ATF equipment and building. Montezuma blames this Court for the

1 financial problems it is facing – problems it created by choosing to avoid the
2 Commission's prior approval of the ATF leases in 2012.

3
4 Because of the length of time in approving the requested rate
5 increases, (emphasis added) MRWC has been unable to pay the lease
6 payments for the Arsenic Treatment Facility in full and the Lessors
7 noted above have requested that MRWC voluntarily surrender the
8 Arsenic Treatment Facility for non-payment. (Motion for
9 Emergency/Interim Relief, Page 2, Line 17-21, March 7, 2014)

10
11 Ms. Olsen and Gregory Olsen signed personal guarantees for the ATF capital lease
12 agreements in the event the Company failed to make payments. It is the Olsens
13 responsibility to cover lease payments pending a final Commission Decision in this
14 consolidated docket, not ratepayers.

15
16 3. Montezuma's ability to provide or maintain service is not in doubt.
17 Montezuma's motion does not state that the Company's failure to obtain
18 interim/emergency relief will result in the failure of the company to deliver potable water
19 at sufficient pressure to its customers. Instead, the motion states:

20
21 MRWC asserts that this relief is necessary in the public
22 interest of MRWC's customers, to ensure the safety and
23 security of the Arsenic Treatment Facility... (Motion of
24 Interim/Emergency Relief, Page 3, Lines 3-7, March 7, 2014.)

25
26 Montezuma failed provide drinking water that met state and federal arsenic standards for
27 many years. In June 2010, Company was ordered by the Arizona Department of
28 Environmental Quality to provide drinking water to its customers through a kiosk at the
29 water company's offices, which few customers utilized.

30
31 Ms. Olsen testified that most of her customers have already installed "point-of-use" or
32 "reverse osmosis" (RO) arsenic treatment systems in their homes, thereby diminishing
33 the negative impact on Montezuma's customers if the ATF was removed because of
34 management's failure to pay the leases.

35
36 **Ms. Olsen:** And I would say approximately 75 percent of
37 the customers in the area probably have an RO unit already.
38 (Evidentiary Hearing, Vol. 3, Page 547, Lines 19-21.)

39
40 Montezuma's 50 or so customers who do not have RO could obtain water from the
41 Company's kiosk.

42
43 Conclusion

44 In the instant case, several dockets including the Formal Complaint were consolidated
45 that has resulted in a more complex and lengthy rate case than is typical for a Class D
46 utility. This is the direct result of the company's mismanagement and deceptive actions.

1 Attorney General Opinion No. 71-17 states that *"interim rate relief should not be made*
2 *available to allow a public service corporation to ignore its obligations to be aware of its*
3 *earnings position at all times and to make timely application for rate relief; thus*
4 *preserving its ability to render adequate service and to pay a reasonable return to its*
5 *investors."*

6
7 Montezuma apparently was not aware of its "earnings position" when it signed the capital
8 leases in 2012 or believed that retroactive approval would come quickly. The Company's
9 mismanagement and deceptive actions should not now be rewarded with an
10 interim/emergency rate increase.

11
12 Furthermore, it is far from certain that the Commission will grant retroactive approval of
13 the leases given the circumstance under which they were signed and the evidence and
14 testimony presented during the five-day evidentiary hearing in this consolidated docket. It
15 is premature for the Commission to grant emergency rate increase given the uncertainty
16 in this docket.

17
18 For all of these reasons, Montezuma's motion for interim/emergency rate relief should be
19 denied.

20
21 *Motion to Install Interim Operator/Manager*

22
23 Given the Company's admission in the evidentiary hearing it violated procedural
24 orders and should have obtained prior approval for the capital leases that now are
25 purportedly threatening the Company's finances, it is in the best interest of ratepayers
26 for the Commission to install an interim manager that could secure a grant from the
27 Arizona Water Infrastructure Financing Authority to pay for the ATF lease payments.

28
29 An interim manager could also renegotiate the lease agreements to reduce the onerous
30 interest rates of 28 percent and 35 percent for the ATF equipment and building that
31 Montezuma signed without prior Commission approval.

32
33 ARS 49-355 (B, 5) provides: "...emergency grants to interim operators or interim
34 managers of small water systems that are appointed by the Arizona Corporation
35 Commission to repair water infrastructure."

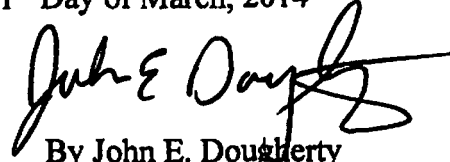
36
37 Paragraph C allows: "On recommendation of the Arizona Corporation Commission
38 the Water Infrastructure Finance Authority of Arizona may approve a grant to an
39 interim operator or an interim manager of a small water system pursuant to subsection
40 B, paragraph 5 of this section only if the operator or manager demonstrates that it
41 requires immediate financial assistance to make repairs to or to rehabilitate the public
42 water system that is operated by the interim operator or manager in order to correct or
43 avoid an interruption in water service."

44
45 This provision provides the Commission with a viable option to renegotiate the ATF

1 leases and provide Montezuma customers with water that meets state and federal
2 drinking water standards while taking appropriate action against Montezuma's
3 management.
4

5 Complainant/Intervenor respectfully moves the Commission to install an interim
6 manager for Montezuma and to pursue, if necessary, a grant from WIFA to obtain the
7 emergency funding necessary to cover the delinquent payments for the ATF pending
8 the outcome of the rate case.
9

10 RESPECTFULLY SUBMITTED this 11th Day of March, 2014
11

12 
13
14 By John E. Dougherty
15 Complainant/Intervenor
16
17

18 An original and 13 copies of the foregoing was filed
19 this 11th day of March, 2014, with:
20

21 Docket Control
22 Arizona Corporation Commission
23 1200 West Washington Street
24 Phoenix, Arizona 85007
25

26 A copy of the foregoing was hand delivered/mailed/emailed
27 this 11th Day of March, to:
28

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